

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1997-239-C – ORDER NO. 2004-173
SEPTEMBER 28, 2004

IN RE: Proceeding to Establish Guidelines for an)	ORDER GRANTING
Intrastate Universal Service Fund)	MOTIONS TO COMPEL
)	DISCOVERY

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on two Motions of the South Carolina Cable Television Association (“SCCTA”) to compel responses to the SCCTA’s Interrogatories in this case from ALLTEL South Carolina, Inc. (“ALLTEL”) and Bluffton Telephone Co., Inc., Hargray Telephone Co., Inc., Home Telephone Co., Inc., Horry Telephone Cooperative, Inc., and PBT Telecom (“ILECs”).

Counsel for the SCCTA served Interrogatories in this matter on ALLTEL on January 13, 2004, and on the ILECs on January 12, 2004. Responses were provided to the SCCTA by ALLTEL on January 23, 2004, and by the ILECs on January 22, 2004. The Responses of both the ILECs and ALLTEL to SCCTA’s Interrogatories objected to the following request:

For each service for which you have reduced a rate and received USF funding since inception of the South Carolina USF, state the following:

- a) the minutes of use of such services for each year since 1997; and

b) the revenues received from the sale of such service for each year since 1997.

Both the ILECs and ALLTEL objected to this Interrogatory on the grounds that the information requested is not relevant and contains confidential and proprietary information. The SCCTA attempted to resolve this issue by offering ALLTEL and the ILECs to enter into a protective agreement to address their concerns regarding information which ALLTEL and the ILECs consider confidential and proprietary. After being unable to reach a resolution on this issue, the SCCTA filed the Motions to Compel Discovery requesting that this Commission order both the ILECs and ALLTEL to file responses to this Interrogatory.

II. FINDINGS OF FACT

1. We find that the Motion under consideration herein was properly filed by the SCCTA in accordance with 26 S.C. Regs. 103-854.

2. We find that the information and material sought by the SCCTA, and objected to by the ILECs and ALLTEL, is relevant to the subject matter of this case and is therefore discoverable under 26 S.C. Regs. 103-851. Such materials are relevant as they may establish whether or not ALLTEL or the ILECs have over-recovered money from the Universal Service Fund.

3. We find that the material requested is neither privileged nor hearing preparation working papers prepared for the pending proceedings and is therefore not entitled to be withheld.

4. We further find that materials requested may contain certain confidential and proprietary information and that ALLTEL and the ILECs are therefore entitled to a

protective agreement to ensure the confidentiality of these materials and the information contained in such. Numerous parties have entered such agreements previously in these proceedings which in the Commission's opinion are sufficient to protect the parties providing such information and materials. We therefore find that the ILECs and ALLTEL are entitled to enter a similar agreement prior to providing the requested materials. The ILECs and ALLTEL, however, may not delay in the entering or signing of such an agreement, by making unreasonable demands beyond the scope and language of such agreements which have previously been entered in these proceedings, for the purpose of delay in providing the requested documents.

5. We find that as the Interrogatories in this matter were served on the Respondents in mid-January that it is reasonable and warranted to require ALLTEL and the ILECs to enter a protective agreement with the SCCTA within five (5) working days of the signing of this Order and to then provide the requested materials within five (5) working days of the signing of such agreement.

III. CONCLUSIONS OF LAW

1. We conclude that the SCCTA is entitled to discovery of the requested materials and information under 26 S.C. Regs. 103-851 as the information requested is relevant to the issues in the pending matter and, further, that the objections of the ILECs and ALLTEL do not fall within the exceptions contained in that Regulation.

2. We conclude that as the requested materials and information are proprietary and confidential that the ILECs and ALLTEL are entitled to a protective agreement or Order prior to releasing such.

IV. ORDER

1. Based upon the above stated Findings of Fact and Conclusions of Law, we hereby grant the Motion of the SCCTA and ORDER the parties to enter into a protective agreement within five (5) days of the signing of this Order.

2. We further ORDER the ILECs and ALLTEL to thereafter provide written responses along with the requested materials and information contained in the SCCTA's "Interrogatory No. 2," and served on the Respondents on January 12 and 13, 2004, within five (5) days of the signing of such agreement.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

_____/s/_____
Randy Mitchell, Chairman

ATTEST:

_____/s/_____
G. O'Neal Hamilton, Vice Chairman

(SEAL)